No. 271

IN THE

Supreme Court of the United States

October Term, 1952

WILLIAM ADAMS, *Petitioner*

v.

STATE OF MARYLAND, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND AND BRIEF

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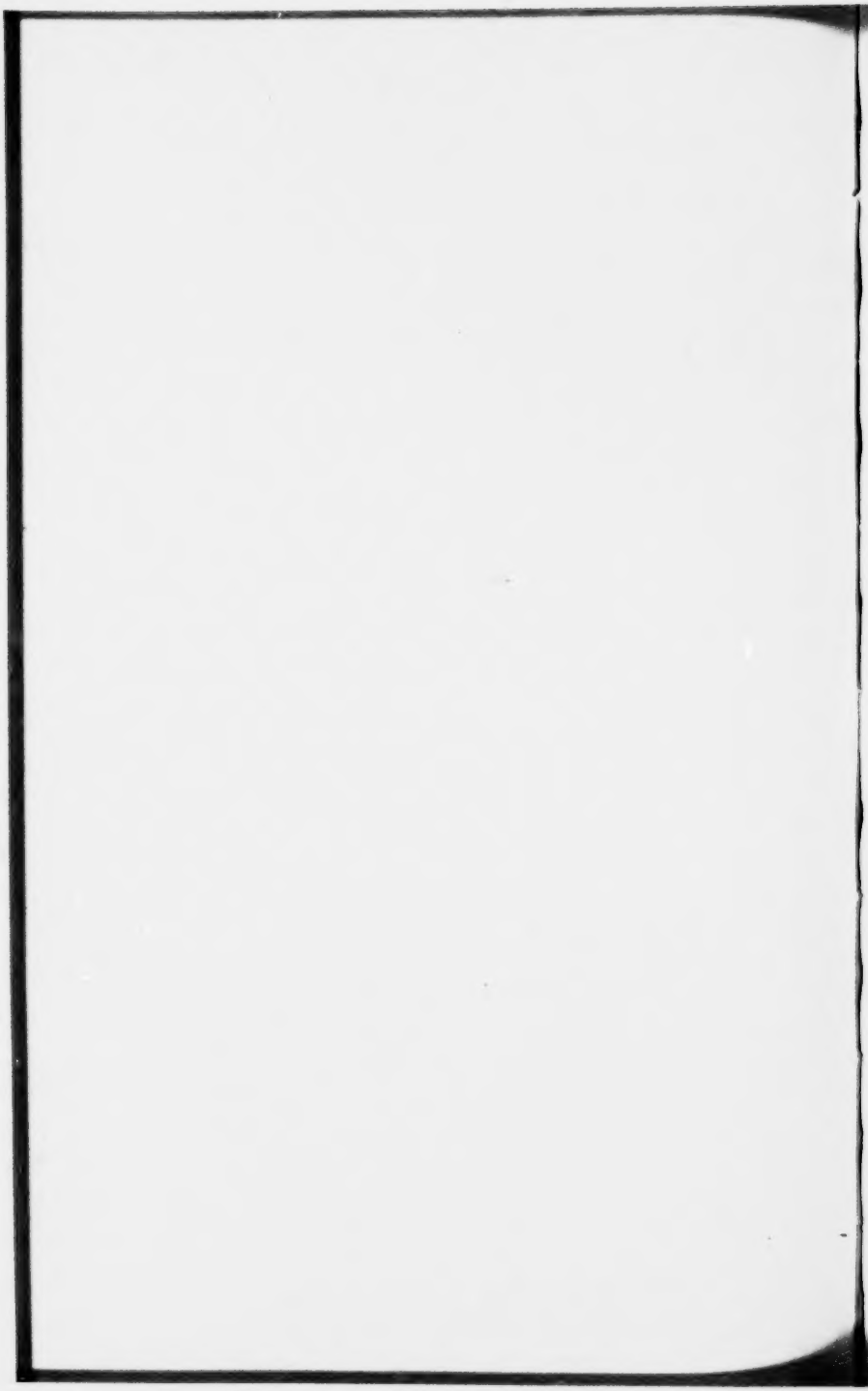

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William Adams, petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the State of Maryland, entered on the 10th day of June, 1953.

OPINIONS BELOW

The opinion of Judge Mason, the presiding Judge in the Trial Court, the Criminal Court of Baltimore City, is herewith set out:

> "(The Court) I have listened very carefully to the testimony in this case, and I think if I believe the testimony of Jones there is enough in it to find a basis that the defendant was in the lottery business at the time Jones said he was there.
>
> "I have mentioned before one or two things, and one of them was the use of the safe for the keeping of the proceeds of the lottery business. There isn't

any doubt in my mind from what Jones says, as well as from what the bookkeeper said, that Jones was around that place, and around there quite a good deal. She put it that he was in some connection with a store business, but he says he wasn't there with the Village Store Business. Jones said he was there in this lottery business, and that he ran it from November up until the following March or May I think it was he said.

"(Mr. Maynard) March 20th.

"(The Court) March 20th of '48. I believe he was there in the lottery business. I believe he was runing it for Adams. I don't know any reason why he would have access to that safe at all if it wasn't to put money in or take money out. That is what safes are for, that is what they are kept for.

"When we get around to the defendant, and the greatest trouble I have frankly with the case is on the question of limitations, when I get around to the testimony of the defendant in the statements that he made before the O'Conor Committee I think he brings himself squarely within the limitations when he puts himself up to 1950 as the time he was in the lottery business. We don't hear of any other lottery business that he was in except this business which Jones says he was in, and which he left full-fledged and running as a lottery business. When Jones left it, when he walked in there and threw his papers down in front of Adams, the business wasn't wound up or anything of the kind. It was then a full-fledged lottery business employing about eight people. Jones quit, he didn't wind it up or anything of the kind, and I think with Adams saying that he continued in that business until 1950 there is every indication that it was the business that Jones was running in 1948 and no other business.

"I find there is a kind of corroboration in this talk about the new operation in 1950.

"I find Adams guilty on the 1st count of the indictment."

The opinion of the Court of Appeals of Maryland, Judge Delaplaine, Jr., is herewith set out:

"This is the appeal of William Adams from his conviction by the Criminal Court of Baltimore on an indictment charging that he and Walter Rouse, of Baltimore, on August 1, 1947, and thence continually until August 15, 1951, unlawfully conspired together, and with certain other persons to the jurors unknown to violate the lottery laws of the State of Maryland. The Court, acting upon the motion of Rouse, ordered a severance. Adams was then tried by the Court sitting without a jury. He was found guilty and was sentenced to the Maryland Penitentiary for a term of seven years and to pay a fine of $2,000.

"It appears that the State failed to produce any evidence that appellant had conspired with anyone by the name of Rouse, but showed that appellant had conspired with Reuben Maurice Jones and other persons. Jones, the chief witness for the State, was one of the participants in a numbers business conducted on Calhoun Street from November, 1947, until March, 1948. He testified that on November 1, 1947, appellant phoned him that if he would call to see Milton Foster, he could get a job in that business that would pay him a commission of 25 per cent of the profits. Jones called at Foster's home on November 2 and started to work on November 3. He kept the accounts of eight men who were 'getting the number business out in the street,' and after each day's work he took the money to his home. Whenever he accumulated about a thousand dollars, he would take it to the Adams Realty Company on Pennsylvania Avenue, where appellant had his private office. He testified that at one time the pile of cash in the safe at the Adams Realty Company amounted to $29,000. However, on March 20, 1948, according to his testimony, he quitted the business. He recalled that he walked into appellant's private office, threw the books on the table and said to him: 'I am through with this job. There is not any future in it whatsoever.'

"Jones further testified that one day in October, 1949, while playing golf in Carroll Park, he was talk-

ing with appellant about the gambling business. He testified: 'I was kidding him about numbers 500 and 501 hit just before Labor Day.' He further testified that appellant told him that he could get a job in a new numbers business, whereupon he replied: 'I feel that numbers you are paying too much, 7 to 1. * * * I felt it would have been 6 to 1, if he was going to operate. In that way you would have more plush or margin on which to sustain those big numbers when you hit like 500 or 501.'

"Jones finally testified that in June, 1950, he attended two meetings held in the office of the Adams Realty Company to consider starting a new numbers business. At those meetings he declared that he would not work in any numbers business unless it paid him a commission of 25 per cent of the profits and the numbers paid only 6 to 1, as 'That was the only way anybody in Baltimore is going to really make money out of the numbers business.'

"The clear inference can be drawn from these conversations between appellant and Jones that appellant was still in the numbers business as late as June, 1950.

"One of the early rules of the common law was that the name of a person necessary for complete description of a crime should be stated in the indictment, if the name of such person is known. The obvious reason for this rule is that every person indicted for a crime is entitled to be informed of the nature of the charge as precisely as possible to enable him to properly prepare his defense. State v. Rappise, N.J. 65 A. 2d 266. However, in order to prevent a failure of justice, it is now generally accepted that, if the name of a person, necessary for complete description of a crime is unknown to the grand jurors, they are justified in alleging that the name of such person is unknown to them.

"It is preferable that an indictment for conspiracy should state the names of the co-conspirators. Laws 1945, ch. 87; Hurwitz v. State, Md., 92 A. 2d 575, 579. It frequently happens however, as the Court said in Rosenthal v. United States, 8 Cir. 45 F 2d 1000, 1003, that an indictment charges the defendant with a conspiracy with persons unknown even if it is not con-

templated that the unknown persons will ever be prosecuted.

"Of course, in order to convict on an indictment charging a conspiracy, the evidence must establish the conspiracy charged and not some other conspiracy. Dowdy v. United States, 4 Cir., 46 F. 2d 417; Lefco v. United States, 3 Cir., 74 F. 2d 66. But where an indictment alleges that two defendants conspired with other persons to the grand jury unknown, one of the defendants may be convicted, even though the other was not a party to the conspiracy, if the proof shows that some other person unknown to the grand jury was a party to it. Worthington v. United States, 7 Cir., 64 F. 2d 936, 939.

"In the case at bar the chief witness, Reuben Maurice Jones, was known to the grand jurors, because he appeared as one of the witnesses before them. Nevertheless, his testimony showed that appellant conspired to violate the lottery laws not only with him but also with other persons who were presumably unknown to the grand jurors.

"Appellant contended that the prosecution was barred by the Statute of Limitations. Prosecution for the crime of conspiracy must be commenced in Maryland within two years after the commission of the offense, Code 1951, Art. 27, sec. 46; Scarlett v. State, Md., 93A. 2d 753. The indictment in this case was filed on August 24, 1951. Appellant argues that Jones got out of the numbers business on Calhoun Street in March, 1948, and that his testimony as to his conversation with appellant in October, 1949, and as to the meetings held in the office of the Adams Realty Company in June, 1950, to consider starting a new numbers business was not substantial enough to prove that he conspired to violate the lottery laws after March, 1948.

"If there were any doubt on this contention, it was removed by the introduction in evidence of the testimony that appellant gave before the United States Crime Investigating Committee in Washington. He testified before that Committee that he did not give up the numbers business until May, 1950. He admitted that he had about ten men who brought in the

money, and that he had a bookkeeper who assisted him with the records.

"Appellant strongly objected to the introduction of the confession which he made before the Senate Committee. He argued that since he was subpoenaed to appear before that Committee, and since he could have been charged with a misdemeanor if he failed to appear, his confession was given under compulsion.

"The Bill of Rights, which applied only to the Federal Government, contains guaranties against oppressive proceedings in criminal prosecutions. The Fifth Amendment contains the Anglo-American concept of justice that no person shall be compelled in any criminal case to be a witness against himself. Likewise, Article 22 of the Maryland Declaration of Rights declares: 'That no man ought to be compelled to give evidence against himself in a criminal case.'

"In Henze v. State, 154 Md. 332, 347, 140 A. 218, the Court of Appeals held that the right of an accused person not to be compelled to give evidence against himself, as guaranteed by the Maryland Declaration of Rights, is not violated by the introduction in evidence of a confession which he voluntarily gave at a former trial for the same offense. The admissibility of testimony given at a former trial depends upon whether or not it was voluntary. To be admissible it must be voluntary, and where there is no evidence to the contrary it will be presumed that the testimony was voluntary.

"Appellant cited the Act of Congress providing that every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or any committee of either House, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, is guilty of a misdemeanor. 2 U.S.C.A., sec. 192.

"Appellant also relied on the Act of Congress which provides that no testimony given by a witness before either House, or before any Committee of either House, or before any Joint Committee should be used as evidence in any criminal proceeding against him in

any Court, except in a prosecution for perjury committed in giving such testimony. 18 U.S.C.A., sec. 3486.

"However, we accept the decision, as announced by the Court of Appeals of the District of Columbia in May v. United States, 175 F. 2d 994, 1000, 1001, certiorari denied, 388 U.S. 830, 70 S. Ct. 58, 94 L. Ed. 505, that in the absence of a refusal to answer followed by compulsion to answer, no immunity from prosecution arising out of the subject matter of testimony inures to the benefit of a witness before Congress either (1) under the Fifth Amendment of the Federal Constitution, or (2) under the statute penalizing failure to testify before Congress, or (3) under the statute providing that no testimony given before Congress shall be used as evidence in any criminal proceeding.

"In explaining that decision, Justice Prettyman, speaking for the Court said:

'The Fifth Amendment deals with compulsion to testify against oneself. Experience long demonstrated that public authorities must at time, in the public interest, obtain information which might incriminate the informant. They may compel that testimony. But they cannot violate, qualify or limit the Constitution. Therefore, when they compel testimony, they cannot use it against the informant. The Constitution is rigid in this respect.

'But not all testimony given public authorities is compelled. Some is given voluntarily, and some, even though not volunteered, is supplied without objection. The Constitution says nothing about such testimony. It does not provide that what a man says voluntarily may not be used against him. So a statute which deals generally with the use of testimony falls partly within and partly without the scope of the Amendment. In so far as it relates to the use of involuntary testimony, it cannot impinge upon the prohibition of the amendment. In so far as it relates to the use of other testimony, it is outside the scope of the Amendment and unaffected by it. The constitution does not require that a statute dealing generally, but exclusively, with the

use of testimony be construed to prevent prosecution upon the subject matter of the testimony.'

"In this case appellant had testified before the Senate Committee without any claim of immunity from self-incrimination. We understand that he refused to answer one question, not material here, and one of the Senators made the comment that the Committee did not have the power to compel an answer to that question. But the testimony of appellant which was introduced in the Court below was given before the Committee voluntarily. The constitutional privilege against the giving of incriminating testimony must be asserted before an immunity is established. To be liable to the penalties of the statute requiring testimony before Congress, a witness must be asked a question and he must refuse to answer. As the Senate Committee did not compel appellant to testify, no immunity arose. Consequently his testimony was admissible in evidence at his trial. The Court did not do him any injustice by admitting statements which he himself gave voluntarily under the sanctity of an oath.

"Under our rules, the verdict of the court sitting without a jury must not be set aside on the evidence unless clearly erroneous. General Rules of Practice and Procedure, part 4, rule 7 (c); Edwards v. State, 81 A. 2d 631, 639; Kaufman v. State, Md., 85 A. 2d 446; Anello v. State, Md., 93 A. 2d 71. Viewing the entire record, we find the verdict of the Court was not clearly erroneous.

"The Judgment thereon will therefore be affirmed."

JURISDICTION

The opinion and judgment of the Court of Appeals of Maryland affirming the conviction of the petitioner in the Trial Court of Baltimore City was entered on the 10th day of June, 1953. The jurisdiction of this Court is invoked under Title 28, U.S.C.A., Section 1257 (3). Petitioner by written motion for appropriate relief in the Criminal Court of Baltimore City prior to his trial objected to the admission in evidence of the transcript of his testimony

taken before the Senate Crime Investigating Committee in Washington, D.C. under date of June 2, 1951. (R. pp. 21-23). Oral objection was also made at the trial of this case to the admission of this testimony, and an appropriate oral motion was made to strike it from the record. Both the oral objection and oral motion were overruled by the Trial Court and the testimony was admitted in evidence. (R. pp. 79-80). Petitioner in thus objecting relied on Section 3486 of Title 18, U.S.C.A. The petitioner was found guilty by Judge E. Paul Mason, presiding in the Criminal Court of Baltimore City on May 29, 1952. (R. pp. 88-89). The objection to the admission of the above testimony was renewed in the Motion for a New Trial heard by the Supreme Bench of Baltimore City which motion was overruled by the Supreme Bench of Baltimore City on November 26, 1952. Petitioner cited as error the failure of the Trial Court to exclude the evidence in accordance with the provisions of Section 3486, but the Court of Appeals of Maryland in its opinion did not pass on the question whether or not the evidence was admissible despite Section 3486, but contented itself by saying that petitioner had testified before the Senate Crime Investigating Committee voluntarily, and that the evidence was admissible under the decision of *May* v. *United States,* 175 F. 2d 994. Petitioner obtained a stay of the Mandate of the Court of Appeals of Maryland for a period of sixty days pending the perfection of his application for a Writ of Certiorari in this Court. (R. p. 107).

STATEMENT OF CASE

On July 2, 1951, the petitioner was summoned to testify before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate. He was also served with a subpoena duces tecum calling upon him to produce certain books and records at the time he testified.

In response to both subpoenas, the petitioner appeared and answered several questions propounded by the Counsel for the Committee.

On August 15, 1951, the Grand Jury in and for the City of Baltimore, State of Maryland, presented the petitioner and Walter Rouse, and charged them with conspiracy together and with other persons to the jurors unknown, to violate the lottery laws of the State of Maryland. On August 24, 1951, an indictment was returned against them, charging them with the identical crime charged in the presentment. A trial before Judge Sherbow and a jury on December 20, 1951 resulted in a verdict of "guilty" as to each; but thereafter and on to wit February 4, 1952, the Supreme Bench of Baltimore City granted both the petitioner and Walter Rouse a new trial.

Prior to the second trial, the instant case, a motion to exclude the testimony taken before the Senate Crime Investigating Committee was renewed, same having been made in the first trial, but was overruled by the trial court on May 21, 1952. On the same day, May 21, 1952, Walter Rouse filed a motion for severance which was granted by the trial judge.

On May 26, 1952, the petitioner went on trial before Judge E. Paul Mason sitting as a Jury where during the trial of the case, the oral objection to the introduction of the testimony of the petitioner before the Senate Crime Investigating Committee was renewed and overruled. (R. pp. 30-31). At the conclusion of the trial, Judge Mason found a verdict of "guilty." (R. pp. 88-89). A motion for a new trial was filed with the Supreme Bench of Baltimore City, alleging that the verdict was contrary to the evidence and the weight of the evidence, that the indictment was insufficient and set forth a crime unknown to the Maryland law and should have been dismissed; that evidence was admitted of certain overt acts barred by the Statute of Limitations; that portions of the transcript of testimony of William Adams taken before the Senate In-

vestigating Committee were erroneously admitted in evidence; and because of newly discovered evidence (R. pp. 89-90). The newly discovered evidence outlined in the petition to the Supreme Bench of Baltimore City was to the effect that the sole witness upon whose testimony the prosecution had relied, R. Maurice Jones, had called the office of counsel for the defendant Adams and made the statement that he had lied in the case as to material testimony against the defendant Adams and desired to make a "deposition and affidavit" in the Office of counsel to that effect. This conversation was corroborated by affidavits of Attorneys Rogan and Ford and by a Margaret L. Cauble, Secretary in the law offices of Attorney Rogan and Ford. (R. pp. 94-99). A motion ne recipiatur was filed by the State and supported by the affidavit of R. Maurice Jones to the effect that he had not made the calls asserted to by the three aforementioned affidavits. The Supreme Bench of Baltimore City, without comment or reference to any of the grounds upon which reliance was had, on, to wit, November 26, 1952, overruled the Motion for a New Trial. (R. p. 5).

Sentence of seven years in the Maryland Penitentiary and a $2,000 fine was imposed on petitioner, William Adams, by Judge Mason, on December 2, 1952. (R. p. 89).

An appeal was noted to the Court of Appeals of Maryland on December 2, 1952, where the judgment of the lower court was affirmed by opinion filed June 10, 1953.

The only evidence introduced at the trial of this case by the state as against the petitioner was the testimony of the witness Reuben Maurice Jones, the testimony of the petitioner before the Senate Crime Investigating Committee, and the testimony of Captain Alexander Emerson, member of the Police Department of Baltimore City and head of the vice squad. Captain Emerson's testimony had no probative value as far as the proof in this case was concerned, he, being called as an expert for the purpose of explaining the meaning of the term "lay off." Reuben

Maurice Jones testified that he and a man named Milton Foster along with a number of others were engaged in a lottery operation at an address on Calhoun Street in Baltimore from November 3, 1947 to March 20, 1948. The State sought to connect the petitioner herein with the Calhoun Street operation by testimony from the witness Jones, as to a telephone call he testified as to having received from the petitioner on Saturday, November 1, 1947; testimony from Jones as to placing profits from the operation in petitioner's safe at 1519 Pennsylvania Avenue, Baltimore, and by two subsequent conversations, one in petitioner's office and one on a golf course.

According to the State's brief filed in the Court of Appeals of Maryland, the predicate for the prosecution in this case was the petitioner's testimony before the Senate Investigating Committee and the testimony of the witness Jones furnished the necessary corroboration. Thus it will be seen the vital importance of the question of the admissibility of petitioner's testimony before the Senate Crime Investigating Committee since without this the State would not have had sufficient evidence with which to convict the petitioner, accepting the State's theory of the case. Under the Maryland Law, a defendant in a conspiracy case cannot be convicted on the uncorroborated testimony of an accomplice alone. *Lanasa* v. *State,* 109 Md. 602, *Wolf* v. *State,* 143 Md. 489. In this case, there is no corroboration of the witness Jones' testimony who, under the State's theory, was an accomplice.

The facts as they were developed by the evidence in this case, as they pertain to the petitioner, are these:

One Reuben Maurice Jones testified that on November 1, 1947, he received a telephone call from someone who identified himself as Willie Adams and advised him (Jones) to get in touch with one Milton Foster and to operate with him (Foster) a lottery business from which he (Jones) was to get 25% of the winnings. (R. p. 33). Thereafter Jones and Foster conducted a lottery operation at a

residence in the Three Hundred Block of North Calhoun Street, Baltimore, Md. He (Jones) controlled the operation and took out from same in the nature of charges for his necessities between $2,500 and $3,000, taking out of such monies as came in sometimes $75.00 a week and sometimes as much as $150.00. (R. p. 34). He invested no money in the operation and did not know who put up the actual operating capital. (R. p. 34). The money taken in daily was first taken by Jones to his home and when the sum reached the amount of $1,000.00 or more, he would take it to an office which had the name on the window of Adams Realty Company and a young lady there named Miss Arrington would open a safe in the office for him and he deposited the money there; the peak amount in said safe having been $29,000.00 in cash. (R. p. 36). Jones continued in this business from November 3, 1947 to March 20, 1948. (R. p. 36). On March 20, 1948, Jones found Mr. Adams sitting in a private office adjoining the office of the Adams Realty Company, threw some books which he had on the desk, announced that he was through and walked out. (R. p. 38). Thereafter in September or October, 1949, Jones saw Adams on the Carroll Park Golf Course and joked with him about lottery numbers 500 and 501 which had hit just before Labor Day. At that time, he (Jones) said in a general conversation between four persons walking along the golf course for about 225 yards that numbers were paying too much, seven to one, and that Jones would be interested if they could be set up at six to one. (R. p. 40). Jones further testified that in about June, 1950, he participated in two meetings in the Adams Realty Company Office at 1519 Pennsylvania Avenue at which time he (Jones) again broached the subject of a lottery enterprise paying six to one and of him getting 25% of the profits in conversation with Mr. Adams, but the proposition did not materialize. (R. p. 41). Under cross-examination, Jones testified that he had appeared before the Senate Crime Committee as a matter of vengeance for

what he considered was an advantage taken of him in a bona fide business transaction. (R. p. 50). That he had no personal knowledge of Adams being in the numbers business and that from November, 1947, until March, 1948, he never saw Adams. (R. pp. 52-53). That he had no arrangement with Adams regarding putting money in the safe. (R. p. 53). That Adams told him if he could work out a plan, regarding the financing of the venture, he was suggesting that he would have to get someone else to put up the money. (R. p. 55). That Adams never came to the Three Hundred Block of Calhoun Street where he was operating and that he never discussed the business with Adams and never made any accounting to him, and that from November, 1947, until June, 1950, he could not specifically place Adams in the numbers business, that he did not know who put up the money and that he never had to raise money outside of what he had in the safe. (R. p. 56).

Over the objection of counsel for the defense, there was read into the record testimony of one Alfred F. Goldstein, identified as a stenotype verbatim reporter, as given at a previous trial and as being substituted for the original notes of Mr. Goldstein, which had been lost, reporting an executive session of July 2, 1951 of the Special Committee to Investigate Organized Crime in Interstate Commerce, U. S. Senate, Senator O'Conor, Chairman; and the testimony of Williams Adams as taken by Mr. Goldstein, before that Committee, accompanied by counsel, J. Francis Ford and Joseph Rogan. (R. pp. 65-72). From this recorded testimony of Mr. Adams, given to the Senate Committee in executive session, before which he had been subpoenaed, there was read into the record testimony to the effect that he had been engaged in the numbers business in Baltimore, Maryland, up until, to wit, May, 1950; explaining his participating in the operation and an average daily take-in of $1,000.00 with a limit of $1.00 to persons playing and in the event of a number of persons playing with him, say eight, having a dollar on the same number, he would

lay off, say $4.00 with someone else, but he could not remember the names of any such persons. (R. pp. 72-73).

Captain Alexander L. Emerson was called as an expert and testified to the effect that he had been connected with the Baltimore Police Department for over thirty years and with the vice-squad for almost 12 years and explained that the word "lay-off" as used by Adams meant when one backer in lottery play got too much "action," he would call it in to another backer. (R. p. 77). Motions made to strike out the testimony of Maurice Jones and the testimony of Mr. Goldstein and for a directed verdict were denied by the Court. On behalf of defendant Adams, a witness, Cecelia McNeal, nee Arrington, was offered and testified that she was an employee of the Adams Realty Company or William Adams, at 1519 Pennsylvania Avenue, from December 16, 1940 to August 9, 1948 as secretary-bookkeeper and outlined her duties as such. She stated that there was no private office but that the one office of the company was within the same four walls and that her desk was directly across from Mr. Adams' desk. That there was a safe in the office with a combination known only to Mr. Adams and herself; that Maurice Jones had no arrangement with her about access to the safe; that he neither gave her money to put into the safe nor could he take out any; and that the highest amount she had known to be in the safe was $1,500 representing receipts for a weekend at the night club, the handling of which was a part of her duties or perhaps a property settlement which was usually in the form of a check. She testified further that she often saw Maurice Jones at her office as his books as proprietor or manager of Village Stores, Inc., were kept there, which business was prior to 1947 but possibly carried over to 1947. (R. pp. 80-82). This is a complete substantial recital of all the testimony adduced. Defense motion for a directed finding was renewed and overruled.

It is our position that these facts are entirely insufficient to support a conviction for a conspiracy allegedly carried on between Adams, Rouse and persons unknown to the Grand Jury, it being remembered in this connection that Judge Delaplaine expressly found that Jones was known to the Grand Jury. It is further to be noted that in Judge Delaplaine's opinion, the Judge states that witness Jones testified that "appellant told him that he could get a job in a new numbers business * * *." It is respectfully submitted that a perusal of the testimony shows no such statement as having been made by Jones and the language in the record will reveal that nothing there justified the drawing of any such inference. Indeed much to the contrary Jones specifically testified that he could not affirmatively state that Adams was engaged in the numbers business. Thus such an affirmance of a groundless conviction amounted to the denial to Adams of the due process of law assured to him by the Fourteenth Amendment to the Constitution. To prosecute defendant under an indictment improperly drafted, with a designed withholding of the name of his alleged co-conspirator so as not to apprise him of the offense with which he was actually charged, more effectually robbed Adams of due process than not to have given him a trial at all. To this lack of due process was added the allowance of the introduction of testimony taken before the Senate Sub-Committee, contrary to the Statute granting immunity and/or providing that testimony given to such Committee could not be used against the person giving it in any other Court. It is also to be noted that the Trial Judge expressed concern as to the question of limitations and apparently satisfies himself that the statutory prohibition as to the conspiracy charged between Adams and Rouse as known conspirators was tolled by the reference made by Jones to a lottery business with him and testimony of Adams bringing his activities in the lottery business up to 1950, without any reference to a co-conspirator and in fact negativing any alleged re-

lationship with either the named co-conspirator of Jones, whose testimony was accepted in proof of the conspiracy charged. As before indicated, it is our position that considering all the factors and evidence adduced, that same were not only insufficient to support a conviction, but amounted to a denial to the defendant of due process of law, guaranteed under the Fourteenth Amendment. The question with respect to the limitation period has been established in the Maryland jurisdiction in the case of *Archer* v. *State*, 145 Md. 128:

> "We are clearly of the opinion that Sec. 11 of Article 57 means *now* just what it meant before the passage of the Acts of 1916 and 1918, and that the prosecution of persons charged with conspiracies or other misdemeanors not 'placed along with felonies' by the grades of punishment fixed for them by the common law or by statute, must be begun within one year from the date of the conspiracy."

QUESTIONS PRESENTED

I. Whether U.S.C.A., Title 18, Section 3486, reading as follows:

> "No testimony given by a witness before either House, or before any Committee of either House, or **before any Joint Committee established by a joint or** concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury in giving such testimony, but an official paper or record produced by him is not within the said privilege."

renders inadmissible testimony given by Adams before a Senate Committee in a criminal case in the Maryland Courts and in turn avoids a conviction which has to rely upon the testimony thus admitted?

II. Whether the conviction of Adams was a denial of his rights under the due process of law clause of the Four-

teenth Amendment of the Constitution of the United States, in that:

a. Said conviction was in violation of Article 22 of the Maryland Declaration of Rights in the language "that no man ought to be compelled to give evidence against himself in a criminal case".
b. Said conviction was based upon an indictment outlining a purported offense which was no offense under the Maryland Law.
c. Said conviction was based upon testimony contrary to and non-supportive of the offense of which the petitioner was charged.
d. The conviction of the petitioner was based upon testimony of alleged overt acts barred by the Statute of Limitations.
e. The opinion of the Court demonstrated that his reliance was upon inferences from the testimony with no basis therefor; upon improper interpretations of the applicable law and citations made; and upon a case, *May* v. *United States*, 175 F. 2d 994, 1000, 1001, certiorari denied, 338 U.S. 830, 70 S. Ct. 58, 94 L. Ed. 505, which is clearly distinguishable as to fundamental facts and which offers no sound legal basis for the conclusion reached by the Court.

SPECIFICATIONS OF ERROR TO BE URGED

The Court of Appeals of Maryland erred:

(1) In denying to the petitioner the rights granted him by Section 3486, Title 18, U.S.C.A., by approving the introduction in evidence of his testimony before the Senate Crime Investigating Committee, and thereby denying the supremacy of an Act of Congress in violation of Article 6 of the Constitution of the United States.

(2) In affirming the judgment and sentence of the Criminal Court of Baltimore City in so far as same were violative of the rights of the petitioner under the due process clause of the Fourteenth Amendment.

STATUTES INVOLVED

The pertinent statutory provisions are printed in the Appendix pp. 37-40.

REASONS FOR GRANTING THIS WRIT

1. The Court of Appeals of Maryland clearly takes the position that in the instant case the rights of the petitioner as guaranteed by Article 22 of the Maryland Declaration of Rights in the language "that no man ought to be compelled to give evidence against himself in a criminal case" were not violated by allowing in evidence over the objection of counsel testimony given by the petitioner in a hearing before the Senate Crime Investigating Committee on the ground that the testimony of the petitioner before that Committee was voluntary. The record in this case shows that the petitioner was duly summoned by the Senate Crime Investigating Committee to appear before it and to testify as to what he knew relative to such matters under consideration by the said Committee. The summons is set out in the appendix. In response to this summons, Adams appeared and testified to certain matters and facts which were under investigation by the Committee. Subsequently, he was indicted by the Grand Jurors of the City of Baltimore and charged with conspiracy to violate the lottery laws of the State of Maryland. At the trial of his case, the stenographic notes of petitioner's testimony taken before the Senate Investigating Committee were read at the trial in the Criminal Court of Baltimore City and this evidence, together with the evidence of one other witness, resulted in his conviction for conspiracy to violate the lottery laws. Objection to the introduction of this evidence was made by written motion, as well as by oral objection at the trial of the case. The objection was renewed at the argument on the motion for a new trial before the Supreme Bench of Baltimore City and again in the argument on appeal in the Court of Appeals of Maryland. Neither the Criminal Court of Baltimore City, the Supreme Bench of

Baltimore City, nor the Court of Appeals of Maryland saw fit to support the objection made to the introduction of this testimony, despite the statutory mandate of the Congress of the United States, and in complete disregard of petitioner's rights under Section 3486 of Title 18, U.S.C.A., which provides as follows:

> "No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committee in giving such testimony. But an official paper or record produced by him is not within the said privilege. June 25, 1948, 62 Stat. 833."

In its opinion the Court of Appeals of Maryland in addressing itself to this question, placed complete reliance on the case of *May* v. *United States*, 175 F. 2d 994, where it was argued that the appellant, May, enjoyed immunity from prosecution. The marked distinction between the two cases can be unquestionably demonstrated. This petitioner, under subpoena and under the stress of being charged with a misdemeanor should he have refused to testify (Section 192, Title 2, U.S.C.A.) and answered questions propounded to him by counsel for the Committee. Ex-Congressman May, at his own instance, without summons, volunteered what he presumably considered as exculpatory statements, and in the trial of the case, through counsel, made same the text of a press release. The procedure in that case we herewith incorporate by the following reference to the trial record in that case:

> "Mr. Paisley: Here is a release to the press. It is styled 'House of Representatives, Committee on Affairs, Washington, D. C. Andrew J. May, 7th District Kentucky. Release, afternoon papers, Sept. 5, 1946, Warren E. Magee & Dan J. Anderson, Attys. at Law, Munsey Bldg., Washington, D.C.'

> "Attached to that press release is a copy of a letter Mr. May wrote to the Chairman of the Meade Committee and 'Statement of Honorable A. J. May before the Senate Special Committee to investigate the National Defense Program, July 26, 1946,' and attached to that is what purports to be an accounting of the funds he received from Cumberland Lumber Co. * * *
> "Mr. Paisley: In fact, we would like the whole thing identified as Government Exhibit 172.
> "(The press release and attached document recorded in evidence as Government Exhibit 172.)"

This testimony was offered during cross-examination by the Government without objection from the defendant. The contrast of circumstances in the instant case is apparent.

It is further to be noted that in that case the appellate court at page 1000 of the Record stated: "The problem before us is whether these appellants were entirely immune from prosecution. *We are not now discussing the admissibility of evidence.*" (Emphasis supplied). In the instant case the admissibility of the evidence is the primary issue.

Thus, relying on the decision in the case of *May* v. *United States,* the Court of Appeals of Maryland erred in affirming the decision of the Criminal Court of Baltimore City, since the Court in the May case did not pass upon the questions involved in the instant case. Article 6, Clause 2 of the Constitution of the United States provides:

> "This Constitution and the laws of the United States shall be made in pursuance thereof. * * * shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

The statute in question (Section 3486, Title 18, U.S.C.A.) is plain in its meaning. The language is perfectly clear, and it contains no reference to any suggestion that the

witness must claim immunity before answering any question. The statute says:

> "No testimony given by a witness * * * shall be used as evidence in any criminal proceeding against him in any Court."

The question then arises as to whether or not Maryland must observe the statutory mandate of Congress. The Petitioner claims that the Maryland Courts must observe the provisions of the statute, and that he has certain rights as a result of this statute. As early as *Claflin* v. *Houseman,* 93 U.S. 130, this Court declared the doctrine as far as a statute of the United States was concerned, and the doctrine of *Claflin* v. *Houseman* has been reaffirmed and reapplied in the case of *Testa* v. *Katt,* 330 U.S. 396. More in point as far as the current question is the case of *Brown* v. *Walker,* 161 U.S. 591. In *Brown* v. *Walker,* the Petitioner and Appellant, Brown, who was an auditor for the Alleghany Valley Railway Company, and he had been subpoenaed as a witness before the Grand Jury at a term of the district court of the second district of Pennsylvania to testify as to a charge then under investigation by that body against certain officers and agents of the railway company for alleged violation of the Interstate Commerce Act. Certain questions were addressed to him which he refused to answer for the reason that his answer would tend to accuse and incriminate him. Brown was held in contempt. In that case, this court has before it for consideration the act of Congress of February 11, 1893, 27th Statute at large, 443, which provided that:

> "No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience of the Commission. * * * on the ground and for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person

shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or either of them, or in such case or proceeding."

The argument was made in that case before this Court that while the witness was granted immunity from prosecution from the Federal government, he did not obtain such immunity against prosecution in the State courts. Mr. Justice Brown, in writing the opinion in that case stated with regard to this contention, "We are unable to appreciate the force of this suggestion. It is true that the Constitution does not operate upon a witness testifying in the State Courts, since we held that the first eight amendments are limitations only upon the powers of Congress and the Federal courts, and are not applicable to the several States except so far as the 14th Amendment may have made them applicable."

"There is no such restriction, however, upon the applicability of Federal Statutes. The 6th article of the Constitution declares that, 'this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.' The Court in that case relied upon the case of *Steward* v. *Bloom*, 78 U.S. 11, Wall 493, where the question was whether a debt contracted by a citizen in New Orleans prior to the breaking out of the rebellion was subject in a State court to the statute of limitations passed by Congress June 11, 1864, declaring that as to actions which should accrue during the existence of the rebellion, against persons who could not be served with process by reason of the war, the time when such persons were beyond the reach of judicial process should not be taken or deemed

to be any part of the time limited by law for the commencement of such actions. The court held unanimously that the debt was subject to this act, and in delivering the opinion of the court, Mr. Justice Swayne said: "

> "But it has been insisted that the Act of 1864 was intended to be administered only in the Federal courts, and that it has no application to cases pending in the courts of the states. The language is general. There is nothing in it which requires or will warrant so narrow a construction. It lays down a rule as to the subject, and has no reference to the tribunals by which it is to be applied. A different interpretation would defeat, to a large extent, the object of its enactment * * * . The judicial anomaly would be presented of one rule of property in the Federal courts and another and a different one in the courts of the State, and debts could be recovered in the former which would be barred in the latter."

Speaking of the question involved in the case of *Brown* v. *Walker*, Mr. Justice Brown continued:

> "The act in question contains no suggestion that it is to be applied only to the Federal Courts. It declares broadly that 'no person shall be excused from attending and testifying * * * before the Interstate Commerce Commission * * * on the ground * * * that the testimony * * * required of him may tend to criminate him, etc. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify,' etc. It is not that he shall not be prosecuted for or on account of any crime concerning which he may testify, which might possibly be urged to apply only to crimes under the Federal law and not to crimes, such as the passing of counterfeited money, etc., which are also cognizable under state laws; but the immunity extends to any transaction, matter, or thing concerning which he may testify, which clearly indicated that the immunity is intended to be general and to be applicable whenever and in whatever court such prosecution may be had."

The doctrine of supremacy as announced in the case of *Brown* v. *Walker* has never been overruled by any subsequent decision of this court, and it would seem therefore in the instant case, that the courts of Maryland were obliged to give full effect to the plain meaning and intent of Section 3486 of Title 18, U.S.C.A., and to exclude from the evidence in this case the testimony of the Petitioner before the Senate Crime Investigating Committee. It should be pointed out that in the instant case, the Congressional Committee was investigating the effect that organized crime had on interstate commerce, and if in a situation where the Congress has seen fit to act and to require testimony of witnesses, that the Congress would have the right to say what could or could not be done with the testimony it had taken. A similar provision of the law is found in the bankruptcy law, where in Section 25 of Title 11 of U.S.C.A. it sets out the duties of the bankrupt, included among which is the duty of the bankrupt to submit to an examination concerning the conduct of his business, the cause of his loss, his dealings with creditors and other persons, the amount, kind, and whereabouts of his property, and in addition, all matters which may effect the administration and settlement of his estate, "*but no testimony given by him shall be offered in evidence against him in any criminal proceeding.*" This statute has been before various State courts where the evidence has been held inadmissible.

Blum v. *State,* 94 Md. 375
Daniels v. *State,* 57 Fla. 1
People v. *Lay,* 193 Mich. 476
See also *People* v. *Donnenfeld,* 198 App. Div. 918, 135 N. E. 903.

Section 3486, Title 18, U.S.C.A., the immunity statute under consideration, has been before at least one State Court and that is in the case of *Erickson* v. *Hogan,* 98 N.Y. Supp. 2nd 858, wherein, it was decided expressly that this statute is applicable to procedure in the State courts.

Aside, however, from the distinctions showing the lack of applicability of the May case to the instant case, the Court of Appeals of the District of Columbia in a case much more recently decided, to wit, July 2, 1953, under circumstances which come much nearer to paralleling the instant case, has in a majority opinion, with Judge Prettyman dissenting, who wrote the May opinion, exploded the theory of voluntariness relied on by Judge Delaplaine in the instant case. This case was *Charles E. Nelson, Appellant* v. *United States of America, Appellee,* No. 11,353, decided July 2, 1953. Judge Bazelon, speaking for the Court, with Judge Edgerton concurring, used such significant and applicable language as the following:

> "Nelson's freedom of choice had been dissolved in a brooding omnipresence of compulsion. The Committee threatened prosecution for contempt if he refused to answer, for perjury if he lied, and for gambling activities if he told the truth * * *.
>
> "If there is anything to suggest that a congressional committee hearing is less awesome than a police station or a District Attorneys Office, and should therefore be viewed differently, it has escaped our notice. The similarity has become more apparent as the 'investigative' activities of Congress have become more distinguishable from the law enforcement activities of the Executive. We would have to be that 'blind' court, * * * that does not see what 'all others can see and understand' not to know that there is wide concern, both in and out of Congress, over some aspects of the exercise of the Congressional power of investigation".

The dissenting opinion of Judge Prettyman in this Nelson case does two things—(1) it shows that the question of the voluntariness of Nelson's testimony was squarely before the Court and that his was the minority view as to its interpretation; and (2) it clearly showed that his opinion in the instant case would have been that petitioners testimony should not have been admitted in evidence. We quote from a pertinent portion of his dissenting opinion:

"As to the Statute (Sec. 3486 of Title 18) I think it was error to admit the documents against Nelson. While they did not constitute testimony, they did constitute evidence given by Nelson while he was a witness before the Committee. But I do not think this error constituted reversible error. There was more than ample other evidence to establish Nelson's guilt; evidence of employees, participants in the numbers game, etc. Some twenty witnesses who said they were otherwise engaged in the numbers operation, testified. They all testified from personal knowledge. His guilt was unquestionably established beyond a reasonable doubt by evidence not connected with these records * * * "

In the instant case, there were not records or documents offered, but actual "testimony" as prohibited by the Act. In the instant case, there was absolutely no other testimony other than that of the petitioner of which the conviction could be predicated. Mindful of the Maryland Law that the conviction could not depend upon the uncorroborated testimony of an accomplice, reliance had to be had solely on this inadmissible testimony of the petitioner himself.

2. This Writ of Certiorari ought to be granted because the interpretation of the language of the Statute, Sec. 3486, 18 U.S.C.A. is being made more and more necessary by what is apparent in the language itself and by varying interpretations of the applicability to state courts. This point squarely met by the appellants brief in the Court of Appeals of Maryland and attempted to be answered by the appellees, is not decided nor commented on in Judge Delaplaine's opinion. This leaves unanswered in the instant case a question to which the rights of the petitioner demand an answer and which can only be fully answered by this tribunal, the Supreme Court of the United States. The answer given by this Court, without any repudiation, has been indicated by the citation of the case of *Brown* v. *Walker,* 16 U.S. 825, 40 L. Ed. 607, the applicability of which has been detailed. Decisions which contradict the conclusion arrived at in the instant case are exemplified in

the case of *Erickson* v. *Hogan*, 98 N.Y.S. (2) 858. In passing upon the question in a defendant's motion to dismiss the complaint for insufficiency, the Court suggested the proper remedy as being an inspection of the Grand Jury minutes so as to move to quash any indictment shown to be principally grounded "on the protected proof". In that case the Court also held Title 18, Section 3486, U.S.C.A. as being applicable to procedure in state courts and cited in support thereof: *Claflin* v. *Houseman*, 93 U.S. 130, 23 L. Ed. 833; *Brown* v. *Walker*, 161 U.S. 591, 40 L. Ed. 819; *Erickson* v. *Macy*, 231 N.Y. 86, 91-92, 131 N.E. 744; *People* v. *Elliott*, 123 Misc. 602, 206 N.Y.S. 54 and *People* v. *Downenfeld*, 198 App. Div. 918, 135 N. E. 903.

The question here involved, was recently decided differently from the determination of the Court in the instant case in the case of *U. S.* v. *DiCarlo*, 102 Fed. Supp. 599.[1] The language of the Court in that case is enlightening and we submit controlling:

> "The foregoing considerations lead inescapably to the conclusion that the defendant is entitled to immunity against disclosures that might incriminate him of violations of state law as well as immunity against self-incrimination of a federal crime. If this conclusion cannot be said to rest upon the principle of state supremacy in the domain of reserved powers, as hereinabove discussed, it finds ample support in the principle that the Fifth Amendment operates as a restraint upon federal officers investigating state crimes.
>
> "It does violence to the American concept of constitutional governments in a system of dual sovereignties to suppose that there is an area of overlapping federal jurisdiction in which the federal government is released from constitutional restraints upon governmental power.
>
> "The rule that the Fifth Amendment affords protection only against prosecutions of federal offenses was

[1] In this case defendant was charged in an indictment containing eight counts with violating Title 2, Sec. 192, U.S.C.A. in refusing to answer pertinent questions put to him as a witness before a sub-committee of a special committee of the United States Senate at Cleveland, Ohio, on January 19, 1951.

declared in the Murdock case. The language of the opinion in that case impliedly negatives the suggestion that the rule should be thus limited in its application in cases where a federal investigation involves 'inquiries to discover evidence of a state crime'. The Murdock case therefore presents no barrier to the extension of the immunity of the Fifth Amendment to witnesses in a Congressional investigation of state crime. United States v. Saline Bank, supra, supports the view that the immunity of the Fifth Amendment may be so extended. While no express reference is made to the Fifth Amendment in that case, the implication is unmistakable that the decision rests upon the authority of the immunity clause of that Amendment. The same is true of the statements of Mr. Justice Holmes in Ballmann v. Fagin, supra. *The fifth Amendment operates as a restraint upon federal officers and federal agencies investigating federal matters. No good reason appears why this restraint should be removed in a federally conducted investigation of state crime.*

"For the reasons assigned, I am of the opinion that the defendant as a witness was entitled to claim immunity against disclosures that might subject him to prosecution under either federal or state laws." (Emphasis supplied)

This Court should affirmatively determine the applicability of Section 3486, Title 18 to testimony attempted to be offered in state courts.

The State of Maryland has heretofore and will doubtless now rely upon the case of *Schwartz* v. *Texas,* 97 L. Ed. Adv. Sheets 157-160. The holding in that case does not conflict with the proposition urged by this petitioner and shown to be supported by applicable decisions of this Court. In the *Schwartz* v. *Texas* case, this court properly took the position that it would not require an interpretation of a Federal Statute as being controlling against a State where the highest state court in the jurisdiction involved and in various other states had uniformly placed a different interpretation upon statutes involving the same proposition.

This does not reach the question which the instant case poses and which as hereinbefore outlined has been squarely met and decided by this Court in *Brown* v. *Walker, supra.* Indeed the applicability of the language of a Federal statute to a State court has again and rather exhaustively been treated in the case of *Case* v. *Bowles,* 327 U.S. 92, 90 L. Ed. 559. The Court at page 558 said:

> "The Emergency Price Control Act grants to the Price Administrator broad powers to set maximum prices for commodities and rents and makes it unlawful for 'any person to violate these maximum price regulations. Section 302(h) 50 USCA Appx. Section 942 (h), defines a 'person' as including 'an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing'. This language on its face, and given its ordinary meaning, would appear to be broad enough to include any person, natural or artificial, or any group or agency, public or private, which sells commodities or charges rents. The argument that the Act should not be construed so as to include a state within the enumerated list made subject to price regulation, rest largely on the premise that Congress does not ordinarily attempt to regulate state activities and that we should not infer such an intention in the absence of plain and unequivocal language. Petitioner presses this contention so far as to urge us to accept as a general principle that unless Congress actually uses the word 'state', courts should not construe regulatory enactments as applicable to the states. This Court has previously rejected similar arguments, Ohio v. Helvering, 292 U.S. 360, 78 L. Ed. 1307, U.S. v. California 297 U.S. 175, 80 L. Ed. 567, California v. United States, 320 U.S. 577, 88 L. Ed. 322 and we cannot accept such an argument now.
>
> We think it too plain, to call for extended discussion that Congress meant to include states and their political subdivisions, or any agency of any of the foregoing. Congress clearly intended to control all com-

modity prices and all rents with certain specific exceptions which it declared. It would frustrate this purpose for courts to read exemptions into the Act which Congress did not see fit to put in the language. Excessive prices for rents or commodities charged by a state or its agencies would produce exactly the same conditions as would be produced were these prices charged by other persons. We, therefore, having no doubt that Congress intended the Act to apply generally to sales of commodities by states."

Dallas v. *Bowles,* 153 F. 2d 464, at page 560:

"Since the decision in M'Culloch v. Maryland, 4 Wheat (U.S.) 316, 4 L. ed. 579, it has seldom if ever been doubted that Congress has power in order to attain a legitimate end—that is, to accomplish the full purpose of granted authority—to use all appropriate means plainly adapted to that end, unless inconsistent with other parts of the Constitution. And we have said, that the Tenth Amendment 'does not operate as a limitation upon the powers, express or implied delegated to the National Government.'

"Whereas here, Congress has enacted legislation authorized by its granted powers, and where at the same time, a state has a conflicting law which but for the Congressional Act would be valid, the Constitution marks the course for courts to follow. Article 6 provides that 'The Constitution and the laws of the United States . . . made in pursuance thereof shall be the supreme law of the land.'

Hines v. Davidowitz, 312 U.S. 52, 85 L. ed. 581.
James Stewart & Co. v. Sadrakula, 309 U.S. 94, 84 L. ed. 596".

3. The Writ of Certiorari should be granted because the entire record discloses a violation of the rights of the petitioner under the due process clause of the Fourteenth Amendment and this Court will re-examine the evidentiary basis upon which the conclusions of the lower court are founded. In the case of *Niemotko* v. *Maryland,* 340 U.S.

270, 95 L. Ed. 270, 95 Law Ed. 267, Chief Justice Vinson, delivering the opinion of the Court said:

> "In cases in which there is a claim of denial of rights under the Federal Constitution, this court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded. See Feiner v. New York, decided this day, 340 U.S. 315 post, 295, 71 Sup. Ct. 303, 328".

In the above cited Miemotko case, in a concurring opinion, referring to that case and to the kindred cases of *Kunz* v. *People of the State of New York,* 340 U.S. 290, 95 Law Ed. 280, and *Fainer* v. *People of the State of New York,* 340 U.S. 315, 95 Law Ed. 295, Mr. Justice Frankfurter emphasized the necessity of examining the evidence in the state courts where a denial of rights under the Federal Constitution was charged.

A re-examination of the instant case will disclose an improperly grounded indictment of an offense not cognizable under the Maryland law; admission in evidence of and conviction upon testimony clearly not admissible and not supportive of the indictment and itself barred by the Statute of Limitations; admission in evidence of testimony before a Senate Crime Investigating Committee, amounting to an involuntary confession, expressly prohibited by statute; and an affirming opinion of the Court based on groundless inferences and improperly interpreted citations, which individually amount to and collectively add up to a violation of petitioner's rights under the due process clause of the Fourteenth Amendment.

The position of this court as to one of the violations above referred to is expressed by Mr. Justice Douglas in the case of *Malinski* v. *New York,* 324 U.S. 404; 89 Law Ed. 1032:

> "But the question of whether there has been a violation of the due process clause of the Fourteenth Amendment by the introduction of an involuntary confession is one on which we must make an independent deter-

mination on the undisputed facts. Chambers v. Florida, 309 U.S. 227, 84 Law Ed. 716, 60 S. Ct. 472; Lisenba v. California, 314 U.S. 219, 86 Law Ed. 166, 62 S. Ct. 280, Ashcraft v. Tennessee, 322 U.S. 143, 88 Law Ed. 1192, 64 S. Ct. 921."

And in the same case, at the same page, Mr. Justice Douglas further said, referring to the use of involuntary confessions:

> "And if it is introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict. Lyons v. Oklahoma, 322 U.S. 596, 597, 88 Law Ed. 1481, 64 S. Ct. 1208."

The language of Mr. Justice Frankfurter in his concurring opinion in this case will emphasize the propriety of reviewing the decision in the instant case.

> " * * * Congress in proposing the Fourteenth Amendment and the States in ratifying it left to the States the freedom of action they had before that Amendment excepting only that after 1868 no State could 'abridge the privileges or immunities of citizens of the United States' nor 'deprive any person of life, liberty, or property, without due process of law,' nor deny to any person the 'equal protection of the laws'. These are all phrases of large generalities. But they are not generalities of unillumined vagueness; they are generalities circumscribed by history and appropriate to the largeness of the problems of government with which they were concerned * * * ".

In the instant case, it must be conceded that there was no evidence apart from the testimony before the Senate Crime Investigating Committee, which may be properly here referred to as an involuntary confession upon which the verdict could be based and all the more certiorari should be granted in order that the judgment of conviction may be set aside.

4. The Writ of Certiorari should be granted for the further reason that the Judicial Code, 28 U.S.C.A. paragraph 344 (b) impowers this Court to issue writs of certiorari to state courts in:

> "* * * any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision should be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of it being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed by either party under the Constitution or any treaty or Statute of, or commission held or authority exercised under the United States; and the power to review under this paragraph may be exercised as well where the Federal Claim is sustained as where it is denied."

In keeping with the foregoing, this Court has promulgated rules under the terms of which grounds for the issuance of a Writ of Certiorari to a state court, among others, are *where the decision involves a matter or question intrinsically important; where a State Court has decided a Federal question of substance in a way not in accord with the applicable decisions of the Supreme Court of the United States; where the decision of the State Court affects the scope of prior rulings of the Supreme Court;* or *where it is claimed that the decision involves an infringement of some provision of the Federal Constitution such as the clause relating to full faith and* credit, the obligation of contract, *due process* or equal protection of the law.

Aside from the reasons theretofore given, the issues involved in the interpretation of the so-called "immunity" statute here in question are of nationwide intrinsic importance and are currently being made the matter of interpretation in various jurisdictions and of proposed Congressional legislation. There is presently pending before the Congress—Senate 16, introduced by Senator McCar-

ran, accompanied by Report 153 submitted by Deputy Attorney General William P. Rogers, which is "A Bill—To Amend the immunity provision relating to testimony given by witnesses before either House of Congress or their Committees."

The proposed bill by express language does not indicate the applicability of the immunity to state courts and whereas reliance is had by some upon the interpretation of similar statutes as affording the applicability to states, it seems generally conceded that final determination will have to be made by this Court. The granting of certiorari in this case will allow of such a decision as the issue was clearly raised in the Court below as to the admissibility of the testimony before the sub-committee in the face of the Statute—Sec. 3486, Title 18, U.S.C.A.

The opinions of eminent constitutional authorities have been solicited—Honorable Philip B. Pearlman, Former Solicitor General of the United States; Hon. Francis Biddle, former U. S. Attorney General; Hon. John W. Davis, internationally recognized constitutional attorney. The over all suggestion seems to be that a final solution will doubtless have to await further action by this Court as opinions vary as to this proposed legislation and its applicability to state courts. In an enlightening and significant article under date of July 12, 1953, the Baltimore Sunday Sun carried an article captioned "Witness—Immunity Bill seen certain to get Court Test," and this article sets forth various and varying opinions of proponents of the new proposed legislation and of outstanding constitutional scholars. These facts and circumstances point out the propriety of this Court granting certiorari in the instant case in order that this question may be set at rest and the individual constitutional rights of this petitioner properly adjudicated.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Certiorari, to bring before this Court the decision and judgment of the Court of Appeals of Maryland, should be granted.

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JOSEPH H. A. ROGAN,
J. FRANCIS FORD,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1953

WILLIAM ADAMS, *Petitioner,*

v.

STATE OF MARYLAND, *Respondent*

Appendix

The 81st Congress, Second Session, passed Senate Resolution 202, which resolution provides as follows:

> Resolved, That a special committee composed of five members, two of whom shall be members of the minority party, to be appointed by the President of the Senate from the Committee on Interstate and Foreign Commerce of the Senate and the Committee on the Judiciary of the Senate, is authorized and directed to make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations by which such utilization is being made, what facilities are being used, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violating of law of the United States or of the laws of any State: Provided, however, That nothing contained herein shall (1) authorize the recommendation of any change in the laws of the several States relative to gambling, (2) effect any change in the laws of any State relative to gambling, or (3) effect any possible interference with the rights of the several States to prohibit, legalize, or in any way regulate gambling within their borders. For the purposes

of this resolution, the term "State" includes the District of Columbia or any Territory or possession of the United States.

Sec. 2. The committee shall select a chairman from among its members. Vacancies in the membership of the committee shall not affect the power of the remaining members to execute the power of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the original selection. A majority of the members of the committee, or any subcommittee thereof, shall constitute a quorum for the transaction of business, except that a lesser number, to be fixed by the committee, shall constitute a quorum for the purpose of taking sworn testimony.

Sec. 3. The committee, or duly authorized sub-committee thereof, is authorized to sit and act at such places and times during the sessions, recesses, and adjourned periods of the Senate, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to procure such printing and binding, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words.

Sec. 4. The committee shall have power to employ and fix the compensation of such officers, experts, and employees as it deems necessary in the performance of its duties, but the compensation so fixed shall not exceed the compensation prescribed under the Classification Act of 1949 for comparable duties. The committee is authorized to utilize the services, information, facilities, and personnel of the various departments and agencies of the Government to the extent that such services, information, facilities, and personnel, in the opinion of the heads of such departments and agencies, can be furnished without undue interference with the performance of the work and duties of such departments and agencies.

Sec. 5. The expenses of the committee, which shall not exceed $150,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Sec. 6. The committee shall report to the Senate not later than February 28, 1951, the results of its study and investigation, together with such recommendations as to necessary legislation as it may deem advisable. All authority conferred by this resolution shall terminate on March 31, 1951.

Section 3486 of Title 18 of U.S.C.A. provides as follows:

"No testimony given by a witness before either House or before any committee of either House, or before any joint committee established by a joint or concurrent resolution of the two Houses of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committee in giving such testimony. But an official paper or record produced by him is not within the said privilege. June 25, 1948, 62 Stat. 833."

Section 192, Title 2, U.S.C.A., provides as follows:

"Refusal of witness to testify. Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine or not more than $1,000 nor less than $100, and imprisonment in a common jail for not less than one month nor more than twelve months."

Article 6, Clause 2 of the Constitution of the United States provides:

"This Constitution and the laws of the United States which shall be made in pursuance thereof,

* * * shall be the Supreme law of the Land, and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

Act of Congress of February 11, 1893, 27th Statute at large, 443, which provides that:

"No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience of the Commission, * * * on the ground and for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commissioner, or in obedience to its subpoena, or either of them, or in such case or proceeding."

Summons

"UNITED STATES OF AMERICA
CONGRESS OF THE UNITED STATES

To William L. Adams

1926 Pennsylvania Avenue, Baltimore, Maryland
Greetings:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the Special COMMITTEE on Organized Crime in Interstate Commerce of the Senate of the United States, on June 27th, 1951, at 10.00 o'clock a. m., at their committee room 457, Senate Office Building, Washington, D. C., then and there to testify what you may know relative to the subject matters under consideration by said committee.

HEREOF FAIL NOT, as you will answer your default under the pains and penalties in such cases made and provided.

To E. H. FARRELL, JR.
to serve and return.

GIVEN under my hand, by order of the Committee, this 15th day of June, in the year of our Lord One Thousand Nine Hundred and Fifty-one.

CHAIRMAN, COMMITTEE ON ORGANIZED CRIME IN INTERSTATE COMMERCE."